

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Carter Garfield	Team: Squad #10	CCRB Case #: 202100688	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 01/28/2021 4:00 PM	Location of Incident: Front of 230 A & M Deli Grocery	Precinct: 52	18 Mo. SOL 7/28/2022	EO SOL 7/28/2022	
Date/Time CV Reported Fri, 01/29/2021 4:05 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 01/29/2021 4:05 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Gregory Scott	00887	961263	052 PCT
2. PO Tyler Hanson	17921	966611	052 PCT
3. POM Bryan Scheblein	26121	955457	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Gregory Scott	Abuse: Police Officer Gregory Scott stopped § 87(2)(b)	
B.PO Tyler Hanson	Abuse: Police Officer Tyler Hanson stopped § 87(2)(b)	
C.POM Bryan Scheblein	Abuse: Police Officer Bryan Scheblein stopped § 87(2)(b)	
D.POM Gregory Scott	Force: Police Officer Gregory Scott used physical force against § 87(2)(b)	
E.POM Gregory Scott	Abuse: Police Officer Gregory Scott frisked § 87(2)(b)	
F.POM Gregory Scott	Abuse: Police Officer Gregory Scott searched § 87(2)(b)	
G.PO Tyler Hanson	Abuse: Police Officer Tyler Hanson searched § 87(2)(b)	
H.POM Bryan Scheblein	Discourtesy: Police Officer Bryan Scheblein spoke discourteously to § 87(2)(b)	
I.POM Gregory Scott	Abuse: Police Officer Gregory Scott failed to provide § 87(2)(b) with a business card.	
J.PO Tyler Hanson	Abuse: Police Officer Tyler Hanson failed to provide § 87(2)(b) with a business card.	
K.POM Bryan Scheblein	Abuse: Police Officer Bryan Scheblein failed to provide § 87(2)(b) with a business card.	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Case Summary

On January 29, 2021, § 87(2)(b) called the CCRB and filed the following complaint.

On January 28, 2021, at approximately 4:00 p.m., in the vicinity of 230 A & M Deli Grocery in the Bronx, § 87(2)(b) was stopped by Police Officers Gregory Scott, Tyler Hanson, and Bryan Scheblein, all of the 52nd Precinct (**Allegations A, B, C: Abuse of Authority – Stop,** § 87(2)(g) Upon stopping § 87(2)(b) PO Scott grabbed § 87(2)(b)'s arm and brought him from the crosswalk to sidewalk in front of 230 A & M Deli Grocery (**Allegation D: Force – Physical force,** § 87(2)(g) PO Scott, who suspected § 87(2)(b) to be carrying a firearm in his right jacket pocket, frisked § 87(2)(b)'s pocket (**Allegation E: Abuse of Authority – Frisk,** § 87(2)(g) At one point, § 87(2)(b) says, “Wanna check?” PO Scott and PO Hanson proceed to search § 87(2)(b)'s jacket pockets (**Allegations F, G Abuse of Authority – Search,** § 87(2)(g)

While speaking to § 87(2)(b) PO Scheblein said, “I understand you’re wearing flip flops and shit” (**Allegation H: Discourtesy – Word,** § 87(2)(g)

PO Scott, PO Hanson, and PO Scheblein all left without providing § 87(2)(b) with a business card (**Allegations I, J, K: Abuse of Authority – Failure to provide RTKA card,** § 87(2)(g) § 87(2)(g), § 87(4-b)

There is BWC from PO Scott, PO Hanson, and PO Scheblein (**BRs 10 – 13**) as well as TARU footage from the intersection (**BRs 14, 26**). Relevant portions will be discussed below.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Gregory Scott stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Tyler Hanson stopped § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Bryan Scheblein stopped § 87(2)(b)

It was undisputed by all parties that § 87(2)(b) was stopped by PO Scott, PO Hanson, and PO Scheblein (**BRs 01 -09**). It was also undisputed that § 87(2)(b) was not found carrying a firearm. § 87(2)(b) provided an intake (**BRs 01, 02**) and phone (**BR 03**) statement in which he consistently stated that he exited the 230 A&M Deli located at 2840 Valentine Avenue and crossed Valentine Avenue to check on his vehicle, which was parked on that side of the street. § 87(2)(b) noticed three uniformed officers in an unmarked vehicle drive past him as he crossed the street. After checking on his car, § 87(2)(b) turned to go back to the deli when the officers backed up their vehicle, exited, and stopped him at the intersection. § 87(2)(b) did not mention his pockets bulging from his wallet, cellphone, and keys.

PO Scheblein (**BR 04**) and PO Scott (**BRs 05-07**) consistently stated that, while driving southbound on Valentine Avenue, they observed § 87(2)(b) walk past their vehicle wearing a large jacket with a “sagging” right pocket that appeared to be holding a heavy object. Both described the object as “L-shaped” and believed the object to be a firearm. As the officers drove past § 87(2)(b) turned around and began walking the other direction. PO Scheblein, who was driving, proceeded to reverse the vehicle and return to the intersection, where they exited their vehicle and approached § 87(2)(b)

PO Hanson (**BRs 08, 09**) stated he first observed § 87(2)(b) after PO Scheblein reversed the vehicle back to the intersection. He stated that he exited the vehicle to assist PO Scott, who exited the vehicle first. PO Hanson stated it was then that he observed a “large, heavy, L-shaped bulge” in § 87(2)(b)'s right jacket pocket that he suspected to be a firearm.

PO Scott prepared a memo book entry for this incident (**BR 19**) which was consistent with his CCRB statement. He specifically stated in his memo book that § 87(2)(b) who he described as wearing a “long green jacket,” “appeared to be adjusting object in waistband area” that he “believed to be a firearm.” He also included that § 87(2)(b) upon observing the officers in their vehicle,

“changed pace and direction while keeping hands in pockets appearing to adjust an object.”

A stop report was prepared for this incident (**BR 15**) that is consistent with officer’s statements. The report, prepared by PO Scott, states that § 87(2)(b) was stopped due a “large heavy L shaped object in his right coat jacket pocket” that was suspected to be a firearm. It also states that § 87(2)(b) “immediately altered his pace and direction of travel” upon observing officers.

In PO Hanson’s BWC (**BRs 10, 13**), at the 00:55 second mark, § 87(2)(b) is clearly seen with his hands in his pockets as described by officers. It is difficult to ascertain if any bulge in § 87(2)(b)’s pockets from the video is more than just § 87(2)(b)’s hands.

According to People v. DeBour 40 N.Y.2d 210, 215, Officers are permitted to stop an individual when they have reasonable suspicion of criminality (**BR 16**).

While PO Scheblein, PO Scott, and PO Hanson all consistently stated that they observed a bulge in § 87(2)(b)’s right jacket pocket, the video footage was not clear enough to corroborate or refute this bulge and there were no independent witness statements. § 87(2)(g)

Allegation (D) Force: Police Officer Gregory Scott used physical force against § 87(2)(b)

§ 87(2)(b) did not allege any force, but on PO Hanson’s BWC (**BRs 10, 13**), at 1:05, PO Scott tells § 87(2)(b) to remove his hands from his pockets, grabs § 87(2)(b)’s left arm, and walks § 87(2)(b) from the middle of the intersection to the sidewalk.

PO Scott (**BRs 05-07**) stated that when he first approached § 87(2)(b) he told § 87(2)(b) to remove his hands from his pockets and § 87(2)(b) briefly hesitated in complying. PO Scott stated he then took § 87(2)(b)’s arm and walked him to the sidewalk for safety concerns.

In PO Hanson’s BWC (**BRs 10, 13**), while there is no audio for the beginning of the interaction, § 87(2)(b) does not appear to remove his hands from his pockets immediately. PO Scott grabs § 87(2)(b)’s arm as soon as he removes it from his pocket and releases § 87(2)(b) when they reach the sidewalk about six seconds later.

Patrol Guide Procedure 221-01 (BR 24) states that officers should consider the following when determining whether the use of force is reasonable: a. The nature and severity of the crime/circumstances, b. Actions taken by the subject, c. Duration of the action, d. Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders, e. Whether the subject is actively resisting custody, f. Whether the subject is attempting to evade arrest by flight, g. Number of subjects in comparison to the number of MOS, h. Size, age, and condition of the subject in comparison to the MOS, i. Subject’s violent history, if known, j. Presence of hostile crowd or agitators, k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.”

As discussed in **Allegations A – C** above, the investigation was unable to corroborate or refute PO Scott’s statement of observing a firearm in § 87(2)(b)’s pocket via the video footage or independent witness statements. Therefore, the justification of PO Scott’s use of force against § 87(2)(b) could also not be determined. § 87(2)(g)

Allegation (E) Abuse of Authority: Police Officer Gregory Scott frisked § 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Gregory Scott searched § 87(2)(b)

Allegation (G) Abuse of Authority: Tyler Hanson searched § 87(2)(b)

It is undisputed that PO Scott felt a bulge in § 87(2)(b)’s pocket when he frisked him.

While not alleged by § 87(2)(b) in PO Hanson’s BWC at the 1:24 mark (**BRs 10, 13**), both PO Scott and PO Hanson are seen reaching into § 87(2)(b)’s pockets.

§ 87(2)(b) consistently stated that after he was brought to the curb, PO Scott frisked his arms, legs, and torso by patting him down and “tugging” on his pockets. He consistently stated that no officer reached into his pockets, but rather he provided his phone, wallet, and car keys from his right jacket pocket to PO Scott.

PO Scott (**BRs 05-07**) stated that § 87(2)(b) was frisked due to a suspicion of carrying a potential firearm in his right jacket pocket. He could not remember if he frisked any other part of § 87(2)(b)'s pocket other than the right jacket pocket. After frisking the pocket, PO Scott said he felt a bulge and pointed to the pocket to which § 87(2)(b) said, “You can search me if you want.” PO Scott proceeded then to search § 87(2)(b)'s right pocket, where he obtained a cell phone, wallet, and car keys. At no point did PO Scott articulate that he felt any object in § 87(2)(b)'s pocket that felt like a firearm. He was not sure if a consent to search form was prepared but knew that a stop report was.

PO Hanson (**BRs 08, 09**) said that § 87(2)(b) offered consent to be searched by saying, “You want to go ahead and check” to officers. PO Hanson interpreted § 87(2)(b)'s statement as permission to search anywhere on § 87(2)(b)'s person, not just a specific pocket. PO Hanson did not observe § 87(2)(b) make any gestures to a specific pocket or area on his person when he gave verbal consent to search. PO Hanson did not believe a consent to search form was prepared.

PO Hanson's BWC confirms that at 1:20 (**BRs 10, 13**), after PO Scott frisks § 87(2)(b)'s right jacket pocket, § 87(2)(b) says to him, “Wanna check?” PO Scott reaches into § 87(2)(b)'s right jacket pocket, and PO Hanson reaches into § 87(2)(b)'s left pocket (PO Hanson's search is clearer on PO Scott's BWC at the 1:30 mark (**BRs 11, 13**).) At no point does any officer ask § 87(2)(b) for permission to search beforehand. § 87(2)(b) is looking directly at PO Scott and the pocket that PO Scott frisked when he gives permission to search. At no point does he look to PO Hanson, who is standing slightly behind him to his left.

The stop report PO Scott prepared for this incident (**BR 15**) is consistent with officer's statements, including that officers did not ask for consent to search but consent was provided. The investigation was unable to find any consent to search form prepared for this incident.

According to People v. DeBour 40 N.Y.2d 210, 215, officers are permitted to frisk an individual when they have reasonable suspicion that the individual has a weapon (**BR 16**).

As discussed in **Allegations A – D**, PO Scott's and PO Hanson's observation of a suspicious bulge on § 87(2)(b)'s pocket could not be corroborated or refuted by video or independent witness statements. As PO Scott stated § 87(2)(b) was frisked due to this suspicion, the investigation was unable to determine whether the frisk itself was justified. § 87(2)(g)

It was undisputed that officers observed a bulge in § 87(2)(b)'s right pocket and that both of § 87(2)(b)'s jacket pockets were searched. It was also undisputed that a consent to search form was not prepared.

When § 87(2)(b) gave consent to search, § 87(2)(b) had already been stopped, brought over to the sidewalk, and had his right pocket frisked by PO Scott. PO Scott does not ask § 87(2)(b) permission to search, but rather points to the pocket he just frisked. § 87(2)(b) is looking at PO Scott and his right jacket pocket when he says, “Wanna check?” Because a consent to search form was not prepared, the investigation was unable to determine if § 87(2)(b) was provided enough information by officers to understand his right to refuse a search.

According to People v. Sanchez, 38 N.Y.2d 72, an officer can conduct a limited search of an area if they feel a hard object and can provide an articulable reason to believe that said object poses a dangerous threat (**BR 29**).

PO Scott testified that § 87(2)(b) was frisked due a suspicion of carrying a firearm in his right jacket pocket. After frisking § 87(2)(b) PO Scott testified that he felt a bulge, but did not elaborate whether or not the bulge felt like a firearm. Therefore, the investigation could not determine whether or not PO Scott possessed a founded suspicion to search § 87(2)(b)'s pocket. It is § 87(2)(g)

In People v. Gonzalez, 39 N.Y.2d 122, “Consent to search is voluntary when it is a true act of the will, an unequivocal product of an essentially free, and unconstrained choice. Voluntariness is incompatible with official coercion, actual or implicit, overt or subtle. Where there is coercion there cannot be consent” (BR 30).

Patrol Guide Procedure 212-11 states that “an officer is permitted to search an individual if the frisk reveals an object which may be a weapon.” It also states that, when searching a person with an expectation of privacy, officers are “required to ask specific questions, ensuring that the person has full knowledge of their rights with respect to a consent search,” including “consent to search in a manner that elicits a clear ‘yes’ or ‘no’ response,” “follow up by explicitly saying, ‘I can only conduct a search, if you consent,’ and to “specifically ask the person, ‘Do you understand?’ If a consent search is conducted, offer the person a CONTACT CARD (PD142-011) with rank, name, shield, and command captions completed.” (BR 27).

NYC Administrative Code §14-173 states that officers are to articulate, using plain and simple language delivered in a non-threatening manner, that the person who is the subject of the search is being asked to voluntarily, knowingly, and intelligently consent to such search, and explaining that such search will not be conducted if such person refuses to provide consent to such search (BR 30).

However, PO Hanson’s search of § 87(2)(b)’s left jacket pocket was not based on any reasonable suspicion of any weapon. While § 87(2)(b) said, “Wanna check?”, PO Hanson did not explain to § 87(2)(b) that he could refuse the search and no consent to search form was prepared. The investigation was unable to determine if § 87(2)(b) provided consent of his own free will or was providing consent to search beyond his right jacket pocket. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Allegation (H) Discourtesy: Police Officer Bryan Scheblein spoke discourteously to § 87(2)(b)

§ 87(2)(b)

While not alleged by § 87(2)(b) PO Scheblein is heard on PO Hanson’s BWC (BRs 10, 13) saying to § 87(2)(b) at the 2:50 mark, “Yo I understand you’re in flip flops and shit, but I’ve recovered guns off people who do have flip flops on so we just want to make sure everything’s good.”

PO Scheblein (BR 04) stated that he specifically remembered not using any profanity during the incident. After being presented with his BWC footage, he amended his statement and said he was using “colloquial language” in order to establish a “rapport” with § 87(2)(b)

At no point in any officer’s BWC (BRs 10-13) is § 87(2)(b) heard using any profanity at any point.

Patrol Guide Procedure 200-02 states the NYPD’s mission statement includes “treating every citizen with compassion, courtesy, professionalism, and respect.” It also states that officers pledge to “Maintain a higher standard of integrity than is generally expected of others because so much is expected of us.” (BR 17).

PO Scheblein’s use of the word “shit” during this interaction served no meaningful law enforcement purpose. PO Scheblein is expected to treat every citizen with courtesy and professionalism as per the patrol guide. § 87(2)(g)

§ 87(2)(b)

Allegation (I) Abuse of Authority: Police Officer Gregory Scott failed to provide § 87(2)(b) with a business card.

Allegation (J) Abuse of Authority: Police Officer Tyler Hanson failed to provide § 87(2)(b) with a business card.

Allegation (K) Abuse of Authority: Police Officer Bryan Scheblein failed to provide § 87(2)(b)

§ 87(2)(b) with a business card.

It is undisputed that § 87(2)(b) did not receive a business card from any officer.

During his phone statement (**BR 02**), § 87(2)(b) stated that PO Scheblein asked him if he wanted a “receipt” for the stop. § 87(2)(b) declined because he thought that a “receipt” meant there would be a written record that he had been stopped by police, which he did not want.

PO Scheblein (**BR 04**) stated that he offered § 87(2)(b) a card and § 87(2)(b) refused. He could not remember how he offered a card to § 87(2)(b). After viewing his BWC, PO Scheblein said the receipt was a piece of paper that they have to print out that is a card as well. On the receipt it has his name, shield, and command. PO Scheblein stated that it takes a few minutes to prepare as it is usually written out by hand, because if you hand all the preprinted ones out you have to handwrite them.

PO Scott (**BRs 05-07**) did not provide a business card, stating that it was due to § 87(2)(b) declining an offer to be provided a “receipt” from PO Scheblein. PO Scott did not independently offer § 87(2)(b) a business card for the frisk, stating that he did not have to so long as “one of us does.” PO Scott confirmed that a “receipt” is the same thing as a business card.

PO Hanson (**BRs 08, 09**) stated that § 87(2)(b) refused an offer for a business card. After viewing his BWC, PO Hanson described a “receipt” as something that lists an officer’s name, shield, tax information, and command. PO Hanson believed a “receipt” to mean the same thing as a business card. PO Hanson confirmed that all three officers were equally in charge on scene.

In PO Hanson’s BWC (**BRs 10, 13**), at 2:50, PO Scheblein says to § 87(2)(b) “You want a receipt for the stop or anything or are you good?” § 87(2)(b) says, “No, I’m good.”

Patrol Guide Procedure 203-09 states that officers are to provide a business card for a law enforcement activity (except in cases when a summons is issued or an arrest is made), including noncustodial questioning of individuals suspected of criminal activity (**BR 18**).

NYC Administrative Code § 14-174 states “A business card is to be offered for a law enforcement activity, including stops, frisks, and searches of persons and property, except in cases when a summons is issued, or an arrest is made” (**BR 25**).

Although it is undisputed that PO Scheblein offered § 87(2)(b) a “receipt” for the stop, PO Scheblein’s description of a “receipt” suggested that he did not have a correct understanding as to what a business card was, and it was confirmed that the term “business card” was never said to § 87(2)(b). PO Scheblein, PO Hanson, and PO Scott thus did not provide § 87(2)(b) with a business card as required. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR 21**).
- PO Scott has been a member of service for five years and has been a subject in three CCRB complaints and five allegations, none of which were substantiated.
 - 201708163 similarly involved a stop allegation, which was unsubstantiated, and a § 87(2)(g), § 87(4-b)
- PO Hanson has been a member of service for two years and has been a subject in two CCRB complaints and four allegations, none of which were substantiated.
 - 201908585 involved a force allegation that was closed pending litigation.
- PO Scheblein has been a member of service for eight years and has been a subject in fourteen CCRB cases and 33 allegations, of which eight were substantiated.
 - 201610413 involved two substantiated allegations of a frisk. The NYPD imposed formalized training.
 - § 87(2)(g), § 87(4-b)
 - 201904252 involved a substantiated allegation of a question, § 87(2)(g), § 87(4-b). The NYPD imposed formalized training.
 - 201909592 involved substantiated allegations of a failure to provide a business card, a frisk, a search (of person), a stop, and a discourtesy (word). § 87(2)(g), § 87(4-b)

There are no recommendations or penalties listed.

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- On March 18, 2021, a FOIL request for any Notice of Claim filed with the Office of the Chief of Department regarding this complaint came back with no results (**BR 22**).
- § 87(2)(b)

Squad: 10

Investigator:	<u>Carter Garfield</u>	<u>Inv. Garfield</u>	<u>12/14/2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Eric Rigie</u>	<u>IM Eric Rigie</u>	<u>4/4/2022</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date